that although Annamalai Chettiar returned to India in June, 1946 taking copies of the accounts with him there is no evidence that any protest was made by the T.AR.CT. firm in regard to his activities during the occupation until June, 1948, by which time other causes of friction between T.AR.CT. and O.RM. had arisen.

On the evidence as a whole I am satisfied that the defendants made repayment of this loan to an ostensible agent of the plaintiff firm, who held the document, and the plaintiffs' claim therefore fails.

Claim dismissed.

MOHAMED HASSAN
v.
PUBLIC PROSECUTOR.

[Orig. App. Juris. (Whitton, J.) November 27, 1951]

[Kota Bahru — Criminal Appeal No. 30 of 1951]

Evidence — Evidence of accomplices — Conviction on uncorroborated evidence of accomplices.

The Appellant in this case, was charged before the President, Sessions Court, Kota Bharu, on 13th August, 1951, with three offences punishable under Section 165 of the Penal Code. He was acquitted on the first and third charges; on the second he was convicted and sentenced to one month's simple imprisonment. The second charge reads as follows:—

"That you, on the 4th March, 1948, at Pasir Puteh, district of Pasir Puteh, Kelantan, being a public servant in the employ of the Government of the State of Kelantan, to wit District Officer of the District of Pasir Puteh, obtained for yourself a valuable thing viz: a sum of money $200 without consideration from Lua Lian Chai whom you knew to be likely to be concerned in business having connection with your official function under the Kelantan Rubber Supervision Enactment No. 10 of 1934 and you thereby committed an offence punishable under Section 165 of the Penal Code."

The main evidence for the prosecution on this charge was that Lua Lian Chai, who was alleged to have paid to the Appellant the $200 mentioned in the charge, his brother-in-law Tan Geok Peng, and an account book produced by Lua Lian Chai purporting to contain the record made at or about the time (4th March, 1948) of the alleged payment. The learned President in accepting this evidence directed himself, in view of the decision in **Trowell v. Public Prosecutor**[1], that he was convicting on uncorroborated evidence of accomplices.

Mr. Bostock Hill, Counsel for the Appellant, contended that the "real point of the appeal" was that it was a conviction on accomplice evidence without there being **independent** corroborative evidence. He conceded that such a conviction was not illegal, but submitted that it should only occur in a very **exceptional** case, and that this was not an exceptional case — at least in the contemplated sense of the term.

Held, (1) that as the learned President had adequately kept in mind the dangers of convicting on this kind of evidence there is no reason to hold that the conviction was against the evidence and (2) that as regards the submission that convictions on the uncorroborated evidence of accomplices should only be recorded in very exceptional cases, no one will question the truth of such submission in so far as it is correct statement of practice, which it is salutary to keep in mind, but, if it is suggested that in some way the words "very exceptional" may be taken to modify or qualify the rules in **Rex v. Baskerville**[4] as set out and applied in the Malayan decisions there is no authority for such a proposition. Appeal dismissed.

Cases referred to:—

(1) *Trowell v. Public Prosecutor* (1946) M.L.J. 41; (1941) F.M.S.L.R. 77.
(2) *Rex v. Ambler* (1938) 2 W.W.R. 225.
(3) *Tay Choon Nam v. Rex* (1949) M.L.J. 157.
(4) *Rex v. Baskerville* (1916) 2 K.B. 658.
(5) *Rex v. Lim Yam Hong* 14 S.S.L.R. 152.

CRIMINAL APPEAL from Sessions Court, Kota Bahru.

A. J. Bostock Hill for the appellant.

L. A. Massie (Federal Counsel) for the Public Prosecutor.

Cur. Adv. Vult.

Whitton, J. : — Mohd. Hassan bin Sulaiman, the appellant in this case, was charged before the President, Sessions Court, Kota Bharu, on 13th August, 1951, with three offences punishable under section 165 of the Penal Code. He was acquitted on the first and third charges; on the second he was convicted and sentenced to one month's simple imprisonment. The second charge reads as follows:—

"That you, on the 4th March, 1948, at Pasir Puteh, district of Pasir Puteh, Kelantan, being a public servant in the employ of the Government of the State of Kelantan, to wit District Officer of the District of Pasir Puteh, obtained for yourself a valuable thing viz: a sum of money $200 without consideration from Lua Lian Chai whom you knew to be likely to be concerned in business having connection with your official function under the Kelantan Rubber Supervision Enactment No. 10 of 1934 and you thereby committed an offence punishable under section 165 of the Penal Code."

The main evidence for the prosecution on this charge was that of Lua Lian Chai, who was alleged to have paid to the appellant the $200 mentioned in the charge, his brother-in-law Tan Geok Peng, and an account book produced by Lua Lian Chai purporting to contain the record made at or about the time (4th March, 1948) of the alleged payment. The learned President in accepting this evidence directed himself, in view of the decision in *Trowell v. Public Prosecutor*[1] that he was convicting on uncorroborated evidence of accomplices. I am satisfied from his grounds of judgment that he adequately kept in mind the dangers of convicting on this type of evidence.

What Mr. Bostock Hill, Counsel for the appellant, called the "real point of the appeal" was that it was a conviction on accomplice evidence without there being *independent* corroborative evidence. It was conceded

that such a conviction was not illegal, but it was submitted that it should only occur in a very exceptional case, and that this was not an exceptional case — at least in the contemplated sense of the term. In support of this submission Mr. Bostock Hill cited the passage in *Rex v. Ambler*[2] quoted in *Trowell v. Public Prosecutor*[1] which reads as follows:—

"In all cases wherein corroborative evidence of the description dealt with in **Rex v. Baskerville**[4] is required and the trial is by a Judge sitting without a jury, a conviction made on the uncorroborated evidence of an accomplice, without an accompanying statement being made by the Judge showing that he convicted with an appreciation of the danger of so doing, should be set aside. If he sees fit to convict in the face of the admonition of Courts past and present as to the danger of convicting the uncorroborated evidence of an accomplice he is at liberty to do so and his conviction will stand, provided he shows that the danger of so doing is present to his mind and the judgment is not otherwise objectionable. There may be a case in which a trial Judge may fittingly convict upon the uncorroborated evidence of an accomplice, but this would be the very exceptional case."

Now, as far as I am aware, the latest authoritative decision in this country dealing comprehensively with the subject of accomplice evidence is *Tay Choon Nam & 2 Others v. Rex*[3]. In that case, Gordon-Smith, Ag. C.J. quoted with approval a summary of the rules laid down in *Rex v. Baskerville*[4] by Woodward, Ag. C.J. in *Rex v. Lim Yam Hong*[5] and went on to quote a further passage in the judgment dealing with the position of a District Judge or Magistrate sitting alone, which reads as follows:—

"If he ignores or disregards any of these principles, then I think it is the duty of this Court to quash the conviction, but if it appears that he has clearly present in his mind the danger of convicting on the unconfirmed evidence of an accomplice, but nevertheless believes that evidence and convicts, this Court will not interfere with the conviction merely on the ground of the want of corroboration."

In *Tay Choon Nam & 2 Others v. Rex*[5] Gordon-Smith, Ag. C.J. also referred to the latter part of the passage in *Rex v. Ambler*[2] set out above. Now as regards the submission of the learned Counsel in the present appeal that such convictions should only be recorded in very exceptional cases, no one will, I imagine, question the truth of this submission in so far as it is a correct statement of practice, which it is salutary to keep in mind, but, if it is suggested that in some way the words "very exceptional" may be taken to modify or qualify the rules in *Rex v. Baskerville*[4] as set out and applied in the Malayan decisions referred to above I can only say that I do not think there is authority for such a proposition.

Counsel for the appellant also stressed the importance of the words in the passage from *Rex v. Ambler*[2] "and the judgment is not otherwise objectionable". I quite agree that it is highly important to bear in mind this aspect of the matter when considering an appeal from a conviction based on accomplice evidence, and I shall proceed to refer to certain views I formed in the present case in this connection. Before doing so I may say in passing that, with respect to the learned Judge who decided *Trowell v. Public Prosecutor*[1], it seems to me at least arguable that entries in account books in this type of case may amount to "independent" evidence, not, of course, considered merely as statements by an accomplice that he handed over a sum of money but considered as facts that records of payments were made in account books.

Being satisfied then that the learned President had warned himself properly of the dangers of accomplice evidence I considered whether the judgment was otherwise objectionable. This in effect meant it was necessary for me to decide whether there were grounds for reversing the judgment by virtue of section 321 Criminal Procedure Code. It was strongly submitted by Counsel for the appellant that the conviction was both wrong in law and against the weight of the evidence.

I have dealt with the ground of appeal that the conviction was wrong in law, by the criterion of proper practice if not technically, because it was unsupported by independent evidence. It was also submitted the decision was wrong in law on the ground that the learned President had approached the case in the wrong attitude for a Court dealing with a criminal case. This submission was based on a paragraph (Number 13) of the grounds of judgment. While I think, with respect to the learned President, that the meaning of this paragraph is not entirely clear, an objection which cannot be made to any other part of his careful and otherwise lucid judgment, I do not infer from this passage in his judgment that the President failed to bear in mind the onus placed on the prosecution in a criminal case.

The main attack in the course of the appeal on the view of the facts formed by the learned President was in connection with the impression he had formed of Tan Geok Peng, the brother-in-law referred to above. In the present trial Tan Geok Peng said he was present when the appellant came to the shop in 1948 and asked Lua Lian Chai for a loan. In a previous trial dealing with the same matters he made no reference to the fact that he was present when the appellant asked for a loan. The learned President considered that the explanation given by Tan Geok Peng for this inconsistency, "I was not asked, so I did not say" was a satisfactory explanation. With respect to the learned President I cannot agree with

him here. There was clear evidence that the Police had taken numerous statements from Lua Lian Chai, at least, before the first trial, and if they had obtained reliable information from these statements that Tan Geok Peng was present when the request for a loan was made, it is hard to believe that Tan Geok Peng would not have been examined on the point by the prosecution at the first trial. There must be grave doubt, in my opinion, whether Tan Geok Peng was present at the request for the loan as alleged. Having come to the conclusion that the learned President should not have relied on his evidence, the question then requiring my very serious consideration was whether a conviction without reliance on Tan Geok Peng's evidence could properly be upheld. In this connection it is pertinent to remember that the learned President had had the advantage of seeing Lua Lian Chai, and accepted him as a witness of truth. More important, however, to my mind is the account book (Exhibit P1). In relation to it the following passage occurs in the learned President's grounds of judgment :—

"The private ledger (Exh. P1) was vigorously attacked as a forgery made expressly for this case. The more I examined this ledger and Entry Exh. P6 in particular the more convinced I became that it was genuine. It was pointed out that the entry was cunningly made next to last in the book. From the date of the first entry this seemed the proper place. I could not agree that the ink for Ex. P6 was much fresher than the ink in the rest of the book. Looking at other entries made at the same time the ink appeared similar to me. It will be noted that the whole ledger closes on 31 August 1948 i.e. half way through the Chinese Year. All the closing entries appeared to me to be in the same ink. I am entirely satisfied as to the genuineness of this ledger."

"I set very great weight upon the evidenciary value of this entry. The book in which it was made was the private ledger, it was not the book kept in Romanised Malay required by the Rubber Supervision Enactment. At the time when that entry Ex. P6 was made there seems to me to have been no reason for making it other than that the defendant did take $200. It was not the lender who came forward to claim his money: he had written it off years ago. If that entry and counter entry were made in 1948 as I firmly believe then the only reasonable explanation is the loan as explained by PW7 and PW8. Had they not written it off as a bad debt its evidenciary value would still have been strong, though not nearly so strong. I can see no reason why PW7 and PW8 should have been manufacturing false evidence against the defendant in 1948 or at any later date. I regard this as a bona fide entry in a Chinese business man's private ledger which was meant for his perusal only and therefore very strong corroborative evidence."

Put briefly the manner in which this ledger implicates the appellant is that on one page headed "Pasir Puteh New District Officer" there is on the debit side an entry dated 7th March 1948. "To loan taken on 4th March $200", and on the credit side opposite the first entry an entry dated 31st August 1948. "By transfer from ledger to Bad Debt Account $200". I had the advantage of being in as good a position as the trial Judge in assessing the value of this evidence. I may say that after careful consideration of the submissions that it was not genuine, I am in entire agreement with the learned President both as to his reasoning and conclusions regarding this account book. There is evidence that a certain amount of animosity existed towards the appellant, but I do not think that there is the slightest possibility this account book was forged for the purpose of building up a case against him. If one accepts this evidence in conjunction with Lua Lian Chai's own testimony I do not think there can be any reasonable doubt that Lua Lian Chai made a "loan" of $200 to the appellant in March, 1948. In the circumstances, even forming the views I did of Tan Geok Peng's evidence, I saw no reason to hold that the conviction was against the weight of the evidence.

There were also a number of minor criticisms levelled against the judgment but I do not think they are of serious substance. As I mentioned in briefly delivering my decision orally I gave this case my very careful consideration and was unable to see any ground for interference with the President's decision.

Appeal dismissed.

HUANG CHIN SHIU v. REX.

[App. Crim. Juris. (Spenser Wilkinson, J.) November 28, 1951]

[Penang — Criminal Appeal No. 28 of 1951]

Criminal trial — Plea of guilty — Statement of facts by prosecution — Interpreter — Interpreter not conversant with accused's dialect — Accused's right to suitable interpreter — Duty of Court Interpreter — Duty of Court.

After an accused has pleaded guilty, if the statement by the prosecuting officer of the facts of the case made for the purposes of sentence does not in itself disclose an offence, this should put the Magistrate on his inquiry, but it is not necessarily a sufficient ground upon which an Appellate Court will allow the accused to withdraw his plea of guilty.

It is the duty of an interpreter not only to make sure that he and the accused understand one another but also to inform the Court if there is any difference of language between them which might cause difficulty; and it is the duty of Magistrates to ensure, as a matter of routine, that this is always done.

Case referred to :—

(1) *Fong Hong Sium v. Public Prosecutor* (1950) M.L.J. 293.

CRIMINAL APPEAL